

1973, as amended. This population will be managed in accordance with the provisions of the accompanying special rule.

EFFECTIVE DATE: August 21, 1991.

ADDRESSES: The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Service's:

- Regional Office, Division of Endangered Species and Environmental Contaminants, 134 Union Boulevard, Lakewood, Colorado (303/236-7398 or FTS 776-7398), and
- Wyoming Fish and Wildlife Enhancement Office, 2617 East Lincolnway, suite A, Cheyenne, Wyoming (307/772-2374 or FTS 328-2374).

FOR FURTHER INFORMATION CONTACT: Mr. Larry Shanks (303/236-7398 or FTS 776-7398) at the Colorado address or Dr. Stephen Torbit (307/772-2374 or FTS 328-2374) at the Wyoming address above.

SUPPLEMENTARY INFORMATION:

Background

1. Legislative

Among the significant changes made in the Endangered Species Act by the Amendments of 1982, Public Law No. 97-304, was the creation of a new section 10(j) which provides for the designation of specific populations of listed species as "experimental populations." Under previous authorities in the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), the U.S. Fish and Wildlife Service (Service) was permitted to reintroduce populations into unoccupied portions of a listed species' historical range when it would foster the conservation and recovery of the species. However, local opposition to reintroduction efforts, stemming from concerns about the restrictions and prohibitions on Federal and private activities contained in sections 7 and 9 of the Act, severely handicapped the effectiveness of this as a management tool.

Under section 10(j), reintroduced populations established outside the current range but within the species' historical range may be designated, at the discretion of the Service, as "experimental." This designation increases the Service's flexibility to manage reintroduced populations of endangered species because experimental populations may be treated as threatened species. The Service has more discretion in devising management programs for threatened species than for endangered species.

Additional management flexibility is possible if the experimental population is found to be "nonessential" to the continued existence of the species in question. Nonessential experimental populations located outside National Wildlife Refuge or National Park lands are treated, for purposes of section 7 of the Act, as if they were only proposed for listing. Only two provisions of section 7 would apply: Section 7(a)(1), which requires all Federal Agencies to establish conservation programs; and section 7(a)(4), which requires Federal Agencies to confer informally with the Service on actions that are likely to jeopardize the continued existence of the species. Section 7(a)(2) of the Act, which requires Federal Agencies to insure that their activities are not likely to jeopardize the continued existence of a listed species, would not apply.

Note: Activities undertaken on private lands are not affected by section 7 of the Act unless they are funded, authorized, or carried out by a Federal Agency.

Individual animals comprising designated experimental population can be removed from an existing source or donor population only after it has been determined that their removal is not likely to jeopardize the continued existence of the species. Moreover, removal must be done under a permit issued in accordance with the requirements in 50 CFR 17.22.

2. Biological

The species addressed by this rulemaking is the black-footed ferret (*Mustela nigripes*), an endangered carnivore with a black facemask, black legs, and a black-tipped tail. It is nearly 2 feet long and weighs up to 2.5 pounds. The only ferret native to North America, it may be extinct in the wild.

Though the black-footed ferret was found over a wide area historically, it is difficult to make a conclusive statement on its historical abundance due to its nocturnal and secretive habits. The black-footed ferret's historical range, based on specimens collected since its identification, includes 12 States (Arizona, Colorado, Kansas, Montana, Nebraska, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Utah, and Wyoming) and the Canadian Provinces of Alberta and Saskatchewan. There is prehistoric evidence of this ferret from Yukon Territory, Canada, to New Mexico and Texas (Anderson et al. 1986). Although there are no specimen records for black-footed ferrets from Mexico, prairie dogs (*Cynomys* spp.) are established in Chihuahua (Anderson 1972) and were present as far back as

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018-AB59

Endangered and Threatened Wildlife and Plants: Establishment of a Nonessential Experimental Population of Black-Footed Ferrets in Southeastern Wyoming

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service), in cooperation with the Wyoming Game and Fish Department, will reintroduce captive-raised black-footed ferrets (*Mustela nigripes*) into the 5,354 km² (2,068 square miles) Shirley Basin/Medicine Bow Management Area in southeastern Wyoming. A backup reintroduction site (Meeteetse Management Area) in northwestern Wyoming also is being readied. Provided conditions are acceptable, 20 or more excess captive-raised ferrets will be released in 1991 and 50 or more excess ferrets will be released annually thereafter for 2 to 4 years or until a wild population is established. Releases will test ferrets reintroduction techniques and, if fully successful, will establish a wild population within 5 years. The Shirley Basin/Medicine Bow population (or the Meeteetse population, if necessary) is designated a nonessential experimental population in accordance with section 10(j) of the Endangered Species Act of

the Late Pleistocene-Holocene Age (Messing 1986). Because black-footed ferrets depend almost exclusively on prairie dogs for food and shelter (Henderson et al. 1969, Forrest et al. 1985), and ferret range is coincident with that of prairie dogs (Anderson et al. 1986) with no documentation of black-footed ferrets breeding outside of prairie dog colonies, black-footed ferrets may have been historically endemic to northern Mexico.

Black-footed ferrets prey on prairie dogs primarily and use their burrows for shelter and denning. There are specimen records of black-footed ferrets from ranges of three species of prairie dogs: black-tailed prairie dogs (*Cynomys ludovicianus*), white-tailed prairie dogs (*Cynomys leucurus*), and Gunnison's prairie dogs (*Cynomys gunnisoni*) (Anderson et al. 1986).

Widespread poisoning of prairie dogs and agricultural cultivation of their habitat drastically reduced prairie dog abundance and distribution in the last century. Sylvatic plague, which may have been introduced to North America around the turn of the century, also decimated prairie dogs, particularly in the southern portions of their range. The severe decline of prairie dogs resulted in a concomitant and near-fatal decline in black-footed ferrets, though the latter's decline may be partially attributable to other factors, such as secondary poisoning from prairie dog toxicants (e.g., strychnine) or high susceptibility to canine distemper. The black-footed ferret was listed as an endangered species on March 11, 1967.

In 1964, a wild population was discovered in South Dakota and studied intensively, but this population became extinct in 1974, with its last member dying in captivity in 1979. Afterwards, some believed that the species was probably extinct until another wild population was discovered near Meeteetse, Wyoming, in 1981. The Meeteetse population underwent a severe decline in 1985-1986 due to canine distemper, which is fatal to infected ferrets. Eighteen survivors were taken into captivity in 1986-1987 to prevent extinction and to serve as founder animals in a captive propagation program aimed at eventually reintroducing the species into the wild.

3. Recovery efforts

The national recovery objective in the recovery plan for this species (U.S. Fish and Wildlife Service 1988) is "To ensure immediate survival of the black-footed ferret by:

- (1) Increasing the captive population of black-footed ferrets to a census size of 200 breeding adults by 1991;
- (2) Establishing a prebreeding census population of 1,500 free-ranging black-footed ferret breeding adults in 10 or more populations with no fewer than 30 breeding adults in any population by the year 2010; and
- (3) Encourage the widest possible distribution of reintroduced black-footed ferret populations."

When this objective is achieved, the black-footed ferret will be downlisted to threatened, assuming the extinction rate of the established populations remains at or below the rate new populations are established for at least 5 years.

Led by the Wyoming Game and Fish Department (Department), cooperative efforts to breed and raise black-footed ferrets in captivity have been encouraging and successful. In 5 years, the captive population has increased from 18 to over 300 black-footed ferrets. In 1988, the single captive population was split into three separate captive subpopulations to avoid the possibility that a single catastrophic event could wipe out the entire known population. These subpopulations are located at the Department's Sybille facility in Wyoming; the Henry Doorly Zoo in Omaha, Nebraska; and the National Zoological Park's Conservation and Research Center in Front Royal, Virginia. Two additional captive subpopulations were established in 1990 (Louisville Zoological Garden in Louisville, Kentucky; Cheyenne Mountain Zoo in Colorado Springs, Colorado). Two more captive subpopulations are planned for the Phoenix Zoo in Phoenix, Arizona, and the Toronto Zoo in Toronto, Canada, at the end of 1991, making a total of seven captive subpopulations by the end of 1991.

Because a secure population of 200 breeding adults already has been achieved, ferret recovery efforts are now moving into the next phase—reintroduction into the wild.

4. Reintroduction Sites

a. Site Selection Process

The Service and State wildlife agencies in 11 western States are identifying potential ferret reintroduction sites within its historical range. As of this writing, potential reintroduction sites in Wyoming (two sites), Montana (one site), and South Dakota (one site) have been identified and compared. Other western States are still in the process of identifying and evaluating additional potential reintroduction sites. Sites are compared

quantitatively and qualitatively and recommended for reintroduction scheduling by an interdisciplinary group assisting the Service known as the Black-footed Ferret Interstate Coordinating Committee.

The Department has a strong interest in reintroducing the ferret into the wild in Wyoming. A site near the town of Meeteetse in northwestern Wyoming and a site in the Shirley Basin/Medicine Bow (SB/MB) area in southeastern Wyoming were identified as the most promising sites in Wyoming for ferret reintroduction. Working together, the Department and the Service have been evaluating these sites' biological suitability and working with affected landowners to develop mutually acceptable management plans for these sites.

Initially, the Meeteetse site was selected as the first reintroduction site because:

- (1) It was the area most recently occupied;
- (2) Efforts to maintain the habitat were ongoing and successful at the time of site selection;
- (3) Most black-footed ferret data were obtained from the Meeteetse area, simplifying comparison of post-reintroduction and historical data; and
- (4) Released animals may be best adapted to conditions in the Meeteetse area.

In 1988, the prairie dog population at the Meeteetse site was estimated to be capable of supporting 29 families of black-footed ferrets. In 1989, the prairie dog complex declined 52 percent, i.e., only 14 ferret families could be supported. In 1990, the site's carrying capacity remained at 14 ferret families. Because of this decline, the Meeteetse site no longer met one of the minimum requirements for reintroduction, i.e., the ferret habitat rating index (black-footed ferret carrying capacity) must be greater than 50 percent of the 1988 rating. It is entirely possible that prairie dogs at Meeteetse may not increase to or maintain themselves at acceptable population levels in the near future.

In September 1990, the Department and the Service met to decide whether to retain the Meeteetse site or to substitute the SB/MB site as the first reintroduction site. After much discussion, both parties agreed to plan for the SB/MB site as the highest priority site, with Meeteetse as a backup site.

The decision to use the SB/MB site as the first reintroduction site does not in any way imply that Meeteetse has been dismissed as a future reintroduction site. In fact, if the SB/MB site is determined

to be unacceptable using the minimum criteria for reintroduction specified in "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming" (Cooperative Management Plan (SB/MB)) (Shirley Basin/Medicine Bow Working Group 1991), then Meeteetse will serve as the backup reintroduction site, provided it is determined to be acceptable using the minimum criteria for reintroduction specified in a "Cooperative Management Plan for Black-footed Ferrets at Meeteetse" (Cooperative Management Plan (M)) (Black-footed Ferret Advisory Team 1990). If the Meeteetse site is not used in a backup capacity, then it will remain under consideration as a future reintroduction site provided biological conditions improve.

As noted previously, the only known population of black-footed ferrets is in captivity. The Service has not concluded that the species is extirpated in the wild, and requires black-footed ferret surveys to be performed if any action authorized, funded, or carried out by a Federal Agency may affect prairie dog colonies deemed capable of supporting ferrets. Numerous ferret surveys have been conducted in the SB/MB and Meeteetse areas and have not turned up any evidence of ferrets (Wyoming Game and Fish Department 1989, Shirley Basin/Medicine Bow Working Group 1991). To the best of our knowledge, any reintroduced population of ferrets at the SB/MB (or Meeteetse) site would be wholly separate and distinct from other populations of this species.

b. Shirley Basin/Medicine Bow Site

The SB/MB site was historically occupied by black-footed ferrets. The latest physical evidence that black-footed ferrets occupied the SB/MB area and southeastern Wyoming was a skull collected in 1979. The SB/MB reintroduction site encompasses 5,354 km² (2,068 square miles), of which 55 percent is private land, 37 percent is federally managed land, and 8 percent is State trust land. Except for the Shirley Mountains, the majority of the land area is actual or potential prairie dog habitat. Mapping conducted in 1990 indicates that 59,726 hectares (147,581 acres) of prairie dog towns exist at the SB/MB site, with the capability of supporting 142 black-footed ferret families (213 adult ferrets).

Reintroduction, habitat management, and intensive ferret management will occur in a specifically delineated area designated the "Shirley Basin/Medicine Bow Management Area." Specifics on the location and boundaries of the SB/MB Management Area are provided in the map accompanying the special rule.

Current plans are to begin releasing ferrets into a subportion of the SB/MB Management Area considered best for release and initial management, known as a "Primary Management Zone" (PMZ). If reintroduction is successful, ferrets will eventually disperse from the PMZ into other portions of the SB/MB Management Area. The preferred release location is PMZ1 (Shirley Basin) in the northern half of the SB/MB Management Area. If major problems arise in PMZ1 prior to release (see below), ferrets will be released in PMZ2 (Medicine Bow) in the southern half of the SB/MB Management Area.

Ferrets will be released only if biological conditions are suitable and a management framework acceptable to the State, Service, and landowners/land managers in the area has been developed. Reintroduction in the SB/MB Management Area will be re-evaluated if one or more of the the following conditions occur:

(1) Failure to maintain at least one PMZ with a black-footed ferret habitat rating index of 26 (i.e., carrying capacity for 40 adult black-footed ferrets) or a strong indication that such will be the case within 5 years.

(2) Inability to formulate a management plan and environmental assessment acceptable to all landowners and agencies with jurisdiction in the Management Area.

(3) Failure to acquire "nonessential experimental population" designation for the site.

(4) A wild black-footed ferret population is discovered within the experimental population area.

(5) An active case of canine distemper is documented in any wild mammal inside the Management Area within 12 months prior to the scheduled reintroduction.

c. Meeteetse (Backup) Site

The Meeteetse site was the last known occupied habitat of the black-footed ferret. It encompasses 538 km² (208 square miles), of which 52 percent is private land, 28 percent is federally managed land, and 20 percent is State trust land. Roughly 9 percent of the site was occupied by prairie dogs in 1988.

The reintroduction and management area at Meeteetse is the "Meeteetse Management Area." Specifics on the location and boundaries of the Meeteetse Management Area are provided in "Location of Reintroduced Population." There is no need to designate a PMZ within the Meeteetse Management Area due to its small size.

The Meeteetse Management Area will be re-evaluated as a backup

reintroduction site if one or more of the following conditions occur:

(1) The ferret habitat rating index is 50 percent or less than the 1988 index (i.e., 29 ferret families) or 1988 to 1991 trends strongly indicate that it will fall below 50 percent within 5 years following the start of reintroduction efforts.

(2) An active case of canine distemper is documented in any wild animal inside the Meeteetse Management area within 12 months prior to the scheduled reintroduction.

(3) Rejection of the Cooperative Management Plan (M) and future reintroduction plans by landowners, State, or Federal agencies with jurisdiction of black-footed ferret populations and habitat in the Meeteetse Management Area.

(4) Failure to obtain the designation of nonessential experimental population or other legal authorization that allows landowner concerns to be adequately addressed.

(5) A wild black-footed ferret is found within the experimental population area.

5. Reintroduction Protocol

In general, the reintroduction protocol will involve releasing 20 or more captive-raised ferrets in the first year of reintroduction, and 50 or more captive-raised ferrets annually thereafter for 2 to 4 years or until a wild population is established. Captive animals selected for release will be as genetically redundant as possible with the gene pool in the captive breeding population, hence, any loss of released animals is unlikely to have appreciable impacts on existing genetic diversity in the species. Moreover, because breeding ferrets in captivity is not a problem, any animals lost in the reintroduction effort could be replaced.

As currently envisioned, young-of-the-year ferrets approximately 14-weeks of age will be released in PMZ1 in September to October 1991, when wild young ferrets typically become independent of natal care and disperse. A "soft" release method will be used, involving a temporary release cage and nest box arrangement with artificial burrows to the outside. The release cage will be placed in or near a high density prairie dog town. As the experimental release proceeds, it may be advisable to surround each release cage with an electric fence to prevent damage by livestock or big game. Black-footed ferrets will be kept in the cage initially, and fed for approximately 10 days.

If they appear to be adapting well, an artificial burrow (which had been plugged) will be opened to the outside and the ferrets allowed free egress and

ingress. They will be supplied food as needed, and use of the cage until they adapt to life in the wild. Eventually, it is expected that all of the animals will learn to hunt on their own and disperse into the wild.

Released animals will be vaccinated against diseases, as appropriate, including canine distemper if an effective vaccine can be developed for ferret use. Preventative and, where necessary, corrective measures to reduce predation by coyotes, badgers, raptors, or other predators will be taken over the short term, without intent to continue over the long term. Habitat conditions will be monitored continually during the reintroduction effort. If the ferret habitat rating or trend of PMZ1 drops to unacceptable levels, ferrets will be released in and/or moved to PMZ2, another biologically suitable prairie dog complex in a non-PMZ area in the SB/MB Management Area, the Meeteetse Management Area, translocated to the next scheduled site, or returned to captivity. To the extent consistent with private landowners' needs to control nuisance prairie dogs and with other economic activities, cooperative measures will be taken to maintain overall prairie dog populations at or near 1990 levels in the SB/MB Management Area.

All black-footed ferrets released will be marked. Initially, all released ferrets will be radio-tagged; in later years, a sample of the released ferrets will be radio-tagged. Radio-tagged ferrets will be monitored.

It is unlikely that released ferrets or their offspring will emigrate outside of the SB/MB Management Area. The SB/MB Management Area is essentially a large island of excellent ferret habitat (i.e., prairie dog colonies) in southeastern Wyoming. The surrounding area is relatively devoid of prairie dog colonies and the eastern edge of the SB/MB Management Area has physical barriers to migration such as Pathfinder, Seminole, and Kortes Reservoirs and the North Platte River. The large size of the SB/MB Management Area, combined with the limited mobility of wild ferrets radio-tagged during 1982 to 1986 studies at Meeteetse (less than 7 km or 4.3 miles/night), makes it unlikely that ferrets will disperse outside of the SB/MB Management Area, given the significantly better colonization opportunities within its boundaries. Moreover, any ferrets that might disperse outside the SB/MB Management Area, but that stay within the experimental population area, may be used to establish or supplement ferret reintroduction sites elsewhere.

The detailed elements of the 1991 reintroduction protocol have been decided. Researchers have tested and will continue to test reintroduction techniques and investigate prerelease conditioning techniques that might improve survival of released captive-raised ferrets, e.g., testing the relative efficacy of available canine distemper vaccines, investigating techniques to teach predator avoidance and develop needed hunting skills, etc.

The first experimental reintroduction design will be tested at the first reintroduction site and possibly modified at this and/or upcoming reintroduction sites. The first release will be limited by the number of captive ferrets available in excess of the captive population objectives. The 20 to 50 excess individuals expected to be released in 1991 are considered sufficient to begin testing release techniques and monitoring results.

Realistically, the Service and the Department expect high natural mortality (up to 90 percent) among the released ferrets in the first year of release, even with a soft release. Despite prerelease conditioning, captive-bred animals will be relatively naive in terms of avoiding predators, securing prey, and withstanding environmental rigors. Mortality is expected to be highest within the first month of release. A realistic goal for the first year would be to work toward enabling a few ferrets to survive at least 1 month after release, with perhaps 10 percent of the released animals surviving the winter.

The intensive studies conducted on the wild Meeteetse population during the 1982 to 1986 period will provide a natural baseline against which the reintroduction effort can be compared to determine how well the reintroduction experiments are proceeding. These baseline data will be supplemented with baseline biological and behavioral data taken in the 1960's and 1970's from the South Dakota population.

If successful, this effort is expected to result in the establishment of a free-ranging population of at least 40 black-footed ferret adults within the SB/MB (or Meeteetse) Management Area by a target date 1996. The Department and the Service will evaluate project progress annually. The biological status of the reintroduction effort at this site will be re-evaluated within the first 5 years to determine future management needs of the population. This 5-year evaluation will not include an evaluation to determine whether the nonessential experimental designation for the SB/MB population should be changed. It is envisioned that the

"nonessential experimental" designation for the SB/MB population will not be changed unless the experiment is determined to be a failure (and this rulemaking is terminated) or until the species is determined to be recovered (and the species is delisted). Once recovery goals are met for delisting the species, a conservation plan(s) will be proposed to address delisting.

Status of Reintroduced Population

The SB/MB (or, if necessary, Meeteetse) population of black-footed ferrets is designated a nonessential experimental population according to the provisions of section 10(j) of the Act. The basis for this designation is explained below. The term "experimental population" will be discussed first, followed by an explanation of why this experimental population qualifies as "nonessential."

"Experimental population" means the reintroduced population will be treated as a threatened species rather than an endangered species. This designation enables the Service to develop special regulations for management of the population that are less restrictive than the mandatory prohibitions covering endangered species if more management flexibility is needed to make reintroduction compatible with current or planned human activities in the reintroduction area. Per section 4(d) of the Act, these special regulations must be "necessary and advisable" to provide for the conservation of the black-footed ferret.

"Nonessential" experimental populations are not essential to the continued existence of the species. For purposes of section 7 of the Act, they are treated as though they were only proposed for listing. The SB/MB experimental population qualifies as being nonessential to the continued existence of the black-footed ferret because:

1. For the time being, the captive population will be the primary species population. This population has been protected against the threat of extinction from a single catastrophic event through the planned splitting of the captive population into seven widely separated subpopulations by the end of 1991. Hence, loss of the experimental population will not jeopardize species' survival.

2. For the time being, the primary repository of genetic diversity for the species will be the 200 adult breeders in the captive population. Animals selected for reintroduction purposes will be as genetically redundant as possible with the captive population, hence any loss of

reintroduced animals in this experiment will not significantly impact the goal of preserving maximal genetic diversity in the species.

3. Any animals lost during the reintroduction attempt can be replaced readily through captive breeding, as demonstrated by the rapid increase in the captive population over the past 5 years. In 1991, 20 or more ferrets should be excess to the numbers needed to maintain the long-term viability and genetic variability and genetic variability of the captive population. After 1991, based on current population dynamics, 100 to 200 juvenile ferrets will eventually be produced each year in excess of numbers needed to maintain 200 breeding adults in captivity.

This reintroduction effort will be the first attempt to reintroduce the black-footed ferret back into the wild. The biological questions and logistical problems that must be addressed are daunting. Yet a reintroduction attempt must be made soon, before the captive population becomes overly adapted to captivity. Continued captivity increases the risk of losing important wild survival instincts and reduces the likelihood of successful reintroduction and recovery of the species. Furthermore, the continuing breeding success of the captive population will create problems in finding and funding adequate housing for captive ferrets in 1991 and beyond.

Fifty-five percent of the habitat in the SB/MB Management Area is privately managed. The nonessential experimental population designation will facilitate re-establishment of the species in the wild by easing landowner concerns about possible overly restrictive protective measures that might be taken. This designation is less restrictive than reintroducing ferrets as an endangered species population. The nonessential designation provides a more flexible management framework for protecting and recovering black-footed ferrets such that private landowners may continue their current lifestyles.

The first few attempts to reintroduce the black-footed ferret into the wild will place great emphasis on developing and improving reintroduction techniques. This applied research will lay the groundwork for a general reintroduction and management protocol for re-establishing ferrets in the wild throughout their historical range. An inability to establish the first population in the first few years of effort will not be considered to appreciably reduce the likelihood of the survival of the species in the wild because the knowledge gained will be used to improve reintroduction techniques, thereby

enhancing the probability of successful reintroductions later on at this and/or future sites.

Assuming successful reintroduction techniques are developed and refined in the SB/MB Management Area and subsequent reintroduction sites, then most, if not all, future reintroductions will be more in the nature of recovery (as opposed to research) efforts aimed at permanently establishing new populations at suitable sites in the wild. As successful wild populations are established, they will provide wild-raised ferrets that can be used to supplement captive releases at other sites. As additional wild populations become established, the captive population will diminish in relative importance and wild populations will increase in relative importance in the overall species recovery effort.

Depending on the progress made in overall species recovery and the unique circumstances surrounding each potential reintroduction site, the Service will evaluate each potential reintroduction site to determine whether it should be proposed as "nonessential experimental," "essential experimental" (i.e., an experimental population that is essential to the continued existence of a listed species), or "endangered" (i.e., a population under all the protections of the Act). The Service believes that at least 10 or more wild populations are needed to insure the immediate survival and downlisting of this species to threatened status (U.S. Fish and Wildlife Service 1988).

Location of Reintroduction Population

Under section 10(j) of the Act, an experimental population must be wholly separate geographically from nonexperimental populations of the same species. Since the last known member of the original Meeteetse ferret population was captured for inclusion in the captive population in 1987, no other ferrets have been confirmed anywhere in the wild. There is a remote chance that ferrets may still exist in the wild. Thousands of hours of ferret survey work have been conducted in the general areas of the proposed of the proposed reintroduction and backup sites in Wyoming and no wild ferrets have been found. Based on these data, it is extremely unlikely that the reintroduced population will overlap with any wild population of the species.

1. Shirley Basin/Medicine Bow Population

The SB/MB Management Area is a large, irregularly shaped area between the cities of Casper and Laramie, Wyoming. The SB/MB Management

Area lies primarily in the northeast corner of Carbon County, extending northward into Natrona County and eastward into Albany County.

Managed so that ferret habitat is maintained in a manner compatible with landowner needs, the SB/MB Management Area will serve as the core recovery area for black-footed ferrets in southeastern Wyoming. The proposed geographic boundaries of the nonessential experimental population would extend beyond the SB/MB Management Area to encompass that portion of Wyoming south and east of the North Platte River in Natrona, Carbon, and Albany Counties.

There have been 350 black-footed ferret surveys (3,452 survey hours) conducted on lands occupied by prairie dogs in and near the SB/MB Management Area (Shirley Basin/Medicine Bow Working Group 1991, table 2). Based on this survey work, it is reasonable to infer that wild black-footed ferrets probably no longer exist in the area south and east of the North Platte River in Natrona, Carbon, and Albany Counties. With this final rulemaking, the Service administratively determines that wild ferrets no longer exist in the experimental population area prior to this release, barring strong evidence to the contrary (such as a wild ferret being found in the experimental population area before the first breeding season).

The SB/MB Management Area will serve as the core recovery area for the SB/MB experimental population, i.e., efforts to maintain ferret and prairie dog populations will focus on the SB/MB Management Area. The area surrounding the SB/MB Management Area is essentially a low-intensity management area that serves more as a buffer zone than a recovery area. Because the best ferret habitat is in the SB/MB Management Area, ferrets will most likely concentrate and reproduce in this area.

Ferrets are planned to be reintroduced into a PMZ in the SB/MB Management Area. Prior to the first breeding season following the first releases, all marked ferrets in the wild in the experimental population area will comprise the nonessential experimental population. During and after the first breeding season, all ferrets in the wild in the experimental population area will comprise the experimental population. Reintroduced ferrets are expected to remain in the SB/MB Management Area for the reasons explained earlier. In the unlikely event that a ferret leaves the SB/MB Management Area but stays within the boundaries of the

experimental population area, the Service and the Department will have the authority to capture the emigrant and place it back into the SB/MB Management Area, translocate it to another reintroduction site, or return it to captivity. If a ferret is found on private land outside the SB/MB Management Area but within the experimental population area, the landowner will be consulted, and the ferret removed if the landowner requests it. If the private landowner has no objection to the ferret remaining on his/her land, then it would be allowed to remain.

There are some significant movement barriers within and bordering the area designated from the nonessential experimental population, such as Seminoe, Pathfinder, and Kortess Reservoirs, the Shirley Mountains, the North Platte River, the Laramie Range, and most importantly, the paucity of significant prairie dog colonies outside the SB/MB Management Area. These movement barriers will impede ferret dispersal within and outside the experimental population area.

Because all ferrets released in the SB/MB Management Area will be marked, in the unlikely event that an unmarked ferret(s) is found in the experimental population area before the first breeding season (February-May 1992) following the Fall 1991 release of ferrets, this will trigger a concerted effort to find the location of the source wild population. This search will determine whether a wild population exists and, if validated, authorities will take appropriate cooperative action for its conservation. In addition, the impact of the ongoing establishment of an experimental population in the SB/MB Management Area on this hypothetical newly found population will be evaluated, and appropriate action taken.

2. Meeteetse (Backup) Population

If insurmountable problems arise at the SB/MB site, ferrets will be reintroduced into the Meeteetse Management Area, provided the minimum criteria for reintroducing ferrets into the Meeteetse Management Area are evaluated and reintroduction is determined to be appropriate.

Located 15 miles west of Meeteetse, in Park County in northwestern Wyoming, the Meeteetse Management Area consists of rangeland bounded on the north by Township 50 North, on the west by Range 104 West, on the south by the Greybull River, and on the east by Wyoming State Highway 120. Despite over 1,700 hours of ferret surveys conducted in the area, the Service and the Department have not received any

evidence confirming the presence of wild ferrets in the area.

As was the case for the SB/MB population, the boundaries of the Meeteetse experimental population would extend beyond the Meeteetse Management Area. Were ferrets to be reintroduced or transferred to the Meeteetse Management Area, the boundaries of the Meeteetse nonessential experimental population would be all of Park County, Wyoming, south of U.S. Highway 16/14/20.

If ferrets disperse outside the Meeteetse Management Area, they would still be considered part of the nonessential experimental population if they were in Park County south of U.S. Highway 16/14/20. Such ferrets would be handled as described for the SB/MB population, and, in accordance with the provisions of the special rule provided herein, modified to designate the Meeteetse population as the nonessential experimental population.

Like the SB/MB Management Area, the area surrounding the Meeteetse Management Area is relatively devoid of prairie dog colonies. To the west, the Absaroka Range is another barrier to dispersal. Apparently, these or other factors are an effective movement barrier, as researchers were unable to document successful dispersal of young ferrets during the period wild ferrets were being studied at Meeteetse.

Management

The SB/MB reintroduction will be undertaken by the Service and the Department in accordance with the Cooperative Management Plan (SB/MB). If Meeteetse must be used instead, reintroduction will be undertaken in accordance with the Cooperative Management Plan (M). These Cooperative Management Plans will be updated as necessary. General reintroduction protocol was discussed under "Background." Additional considerations pertinent to reintroduction are discussed here.

1. Monitoring

Various monitoring efforts are planned over the first 5 years. Prairie dog numbers and distribution will be monitored prior to and annually during the reintroduction effort (Shirley Basin/Medicine Bow Working Group 1991). Monitoring for sylvatic plague will be done prior to reintroduction and annually at least through 1996. If the ferret habitat rating drops to 50 percent or less of the objective level, reintroduction efforts will be re-evaluated. There also will be monitoring for canine distemper prior to and during reintroduction. Reintroduced ferrets and

their offspring will be monitored every year, using spotlight surveys and/or snowtracking surveys done on foot. In the initial years, all released ferrets will be marked and radio-collared. During the first year, the greatest emphasis in ferret monitoring will be placed on determining causes of injury and mortality and using the results to refine the reintroduction protocol to reduce such losses. Assuming a few ferrets survive the winter and enter the courtship and breeding season the next year, monitoring of ferret breeding success and recruitment will take priority. Ferret behavior will be monitored throughout the duration of the effort.

2. Disease Considerations

Reintroduction will be re-evaluated if an active case of canine distemper is documented in any wild mammal within 12 months prior to the scheduled reintroduction. Samples from 40 coyotes and 40 badgers will be obtained prior to reintroduction to determine if active canine distemper exists in the reintroduction area. Visitors and biologists in the SB/MB Management Area will be discouraged from bringing dogs. Residents and hunters will be encouraged to vaccinate pets and report sick wildlife. Efforts are continuing to develop an effective canine distemper vaccine for ferrets.

Ferrets will not be introduced into and/or will be relocated from the SB/MB Management Area if the ferret habitat rating falls below acceptable minimum levels as a result of sylvatic plague. Sampling for sylvatic plague will occur on a regular basis prior to and during the reintroduction effort. To the extent possible, strategies will be developed to enhance prairie dog recovery in areas impacted by plague.

3. Genetic Considerations

While the ultimate genetic goal of the reintroduction program should be to establish wild reintroduced populations that embody the maximum level of genetic diversity available from the captive population, this does not need to be the immediate goal in Wyoming. Individuals used for reintroduction will be chosen so that the level of genetic diversity and demographic stability (e.g., stable age and sex structure) of the captive population is not compromised (reduced) by their removal. Therefore, early experimental reintroductions will likely consist of a biased sample of the genetic diversity of the captive gene pool. This bias will be corrected at a later date by selecting and re-establishing breeding ferrets that

theoretically compensate for any genetic biases in earlier releases.

4. *Prairie Dog Management*

The Service and the Department will work cooperatively with landowners and land management agencies in the SB/MB Management Area to: (a) Manage the two PMZ's (each with a black-footed ferret family rating of at least 26) and maintain their current black-footed ferret habitat capabilities based on 1990 prairie dog densities and distribution; and (b) maintain at least 90 percent of the current black-footed ferret habitat capability (prairie dog acreage) in non-PMZ areas (based on 1990 prairie dog acreage density data). Means for managing the prairie dog ecosystem in the proposed reintroduction area have been incorporated into the Cooperative Management Plan (SB/MB). (Copies may be obtained by contacting the Wyoming Game and Fish Department, 260 Buena Vista, Lander, Wyoming 82520 (307-332-2688).) Specific prairie dog acreages will be established for each ranch in the SB/MB Management Area, set entirely at the prerogative of the landowner. On public lands with private grazing leases, the number and distribution of prairie dogs will be set cooperatively. In areas where prairie dogs become a problem for the landowner, control techniques compatible with ferret recovery objectives could be implemented, e.g., use of control methods that are not lethal to ferrets, removal and relocation of ferrets prior to control of prairie dogs, use of ferrets to control prairie dog numbers, or agreements to allow expansion of prairie dog acreage elsewhere in the PMZ to compensate for acreage lost during the control program.

5. *Mortality*

As noted earlier, only those animals considered excess to the needs of the captive breeding goal will be used in this reintroduction attempt. Though efforts will be made to reduce mortality, significant mortality will inevitably occur as captive-raised animals adapt to the wild. Natural mortality from predators, fluctuating food availability, disease, hunting inexperience, etc., will be reduced through predator and prairie dog management, vaccination, soft release, supplemental feeding, and prerelease conditioning. Human-caused mortality will be reduced by information and education efforts directed at landowners and land users, and review and cooperative management (where necessary) of human activities in the area.

A low level of mortality from incidental take is expected as a result of

designing the ferret reintroduction program to work within the context of traditional land uses in the SB/MB Management Area. Incidental take is any take that is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity within the experimental population area.

Ferret injuries or mortalities will be required to be reported immediately to the Service. The Service will investigate each case. If it is determined that a ferret injury or mortality was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, then there will be no penalty. Knowing or willful take will be prosecuted.

The final biological opinion prepared on the reintroduction proposal anticipates an incidental take level of 12 percent/year. If this level of incidental take is reached at any time within any year, the Service, in cooperation with the Department, will conduct an evaluation of incidental take and cooperatively develop and implement measures to reduce incidental take.

Even if all released animals were to succumb to natural and human-caused mortality factors, this would not jeopardize the continued existence of the species. As noted earlier, the captive population is the primary species' population and could readily replace any animals lost in the reintroduction effort. This is consistent with the designation of the reintroduced population as a nonessential experimental population. The choice for wildlife managers is either to risk excess captive ferrets in reintroduction efforts in order to re-establish the species in the wild, or to keep all ferrets in relative safety in captivity and forgo re-establishing the species in the wild.

6. *Special Handling*

Under the special regulation (promulgated under authority of section 4(d) of the Act) that will accompany the experimental population designation, Service and Department employees and agents would be authorized to handle ferrets for scientific purposes (such as replacing radio-collars); relocate ferrets to avoid conflict with human activities; relocate ferrets that have moved outside the SB/MB Management Area when removal is necessary or requested; relocate ferrets within the experimental population area to improve ferret survival and recovery prospects; relocate ferrets to future reintroduction sites; aid animals which are sick, injured, or orphaned; and salvage dead ferrets. If a ferret is determined to be unfit to remain in the wild it would be

returned to captivity. The Service would determine the disposition of sick, injured, orphaned, or dead ferrets.

7. *Coordination With Landowners and Land Management Agencies*

This action was discussed with potentially affected State and Federal agencies in the proposed reintroduction area. A scoping effort to identify issues and concerns associated with reintroduction into the SB/MB area was conducted prior to the development of the proposed rule. A SB/MB Working Group consisting of a representative each from the Department, Service, Bureau of Land Management, and Wyoming Board of Land Commissioners; and two private landowners was assembled to define the boundaries of the SB/MB Management Area, identify issues and concerns, and develop the Cooperative Management Plan (SB/MB). Affected private land managers in the area were consulted; offered the opportunity to participate in the development of the Cooperative Management Plan (SB/MB); and, to the extent the Department and Service can determine, concurred with or did not oppose the proposed action provided it did not interfere with existing lifestyles and current and potential income. Public meetings concerning the proposed SB/MB reintroduction were held in Medicine Bow, Laramie, and Casper, Wyoming, in November 1990 to offer the general public in Wyoming the opportunity to learn about and comment on the reintroduction proposal.

Similar efforts were conducted to involve affected State and Federal agencies, private landowners, and the general public in Wyoming in scoping out and formulating the Cooperative Management Plan (M). Public meetings were held in Meeteetse, Cody, and Casper, Wyoming, in September 1989.

Thirty-seven percent of the SB/MB Management Area is federally managed lands (197,601 hectares or 487,904 acres). The Bureau of Land Management has jurisdiction over 97 percent of the surface Federal lands and all of the Federal mineral estate in the SB/MB Management Area. The Bureau of Reclamation has jurisdiction over 3 percent of the land. There are no conflicts expected with any current or anticipated actions of Federal Agencies from reintroduction of ferrets into the SB/MB Management Area. The Bureau of Land Management participated in the development of the Cooperative Management Plan (SB/MB) and the environmental assessment.

The Wyoming Board of Land Commissioners administers about 8

percent of the land in the area (43,241 hectares or 106,768 acres) and may propose or permit actions in the future that could affect the black-footed ferret or its habitat. Any changes in State trust land management must be specifically authorized and approved by the Wyoming Board of Land Commissioners. This agency also was a participant in developing the Cooperative Management Plan (SB/MB).

Private landowners own 55 percent of the land (295,320 hectares or 729,184 acres) in the SB/MB Management Area. Their voluntary participation is crucial to the success of this project. Their acceptance of and participation in this rulemaking process and the Cooperative Management Plan (SB/MB) is an essential part of the planning for and management of the reintroduced population.

The Meeteetse Management Area is rangeland under private (52 percent), State (20 percent), and Federal (28 percent) ownership. For the most part, prime ferret habitat and access to it is controlled by private landowners. Therefore, the voluntary participation of private landowners is essential to any cooperative reintroduction effort at Meeteetse.

8. Potential for Conflict With Oil and Gas and Mineral Development Activities

The boundaries of the SB/MB Management Area and the PMZ's were, in part, developed to exclude potential

conflicts with development activities, where possible. The maximal impact these activities could have on ferret habitat in the SB/MB Management Area is discussed in the Cooperative Management Plan (SB/MB) and may be summarized as follows:

—There are 35 active oil and gas wells in the SB/MB Management Area. No active wells occur in PMZ1. The greatest potential for future oil and gas development is centered in existing developments, mostly in PMZ2. The high potential areas for oil and gas development lie under 6,404 hectares (15,825 acres) of prairie dog towns in PMZ2, and 1,968 hectares (4,859 acres) of prairie dog towns in non-PMZ areas. Existing (15 hectares) and high potential oil and gas development areas comprise 8,387 hectares or 14.0 percent of the ferret habitat in the SB/MB Management Area.

—Three coal leases occur in the SB/MB Management Area. No active mining occurs in the area at present. Up to 598 hectares of prairie dog towns could potentially be impacted if these leases were developed or 1.0 percent of the ferret habitat in the SB/MB Management Area.

—Demand for saleable minerals (sand, gravel, limestone) has been low and would probably remain low in the foreseeable future. If mineral materials permits in the area were fully developed, up to 199 hectares or 0.3 percent of ferret habitat would be lost.

—Locatable mineral claims (primarily uranium and bentonite) occur within the SB/MB Management Area. There are 22 claims occur in PMZ1 and 35 claims within PMZ2. At the present time, locatable mineral mining is not contributing to a significant loss of ferret habitat. If fully developed, these claims could impact 3,757 hectares or 6.3 percent of the ferret habitat in the SB/MB Management Area.

—There are 447 hectares or 0.7 percent overlap among the development activities described above.

In summary, considering all existing and potential oil, gas, and mineral development on existing leases in the SB/MB Management Area, a "worst case" maximum of approximately 12,485 hectares or 20.9 percent of the ferret habitat in the SB/MB Management Area could be impacted under a full development scenario without mitigation (see table 1). A 20.9 percent loss of ferret habitat would not preclude establishment of a viable wild population of ferrets in the SB/MB Management Area, as sufficient habitat would remain to support 168 ferret adults. Moreover, such a "worst case" scenario is unlikely, given the opportunity to mitigate habitat losses by expanding prairie dog colonies into areas currently unoccupied by prairie dogs.

TABLE 1. SUMMARY OF CURRENT AND MAXIMUM POTENTIAL IMPACTS TO BLACK-FOOTED FERRET HABITAT IN THE SB/MB MANAGEMENT AREA

	Area currently impacted		Area potentially impacted	Percent of the prairie dog complex
Oil and Gas.....	15ha (36ac)	+	8,372ha (20,684ac).....	14.0
Coal.....	0		598ha (1,477ac).....	1.0
Saleable Minerals.....	0		199ha (492ac).....	0.3
Locatable Minerals.....	0		3,757 ha (9,284ac).....	6.3
Area of Overlap.....			<447ha (1,104ac)>.....	<0.7>
Highest possible impact from leasing.....				12,485ha (30,849ac) 20.9

Source: Adapted from "A Cooperative Management Plan for Black-footed Ferrets—Shirley Basin/Medicine Bow, Wyoming" (1991).

There is oil and gas development potential in the Meeteetse Management Area, however, drillable prospects appear limited at this time. Were ferrets to be reintroduced into the Meeteetse Management Area, the Service, Department, and Bureau of Land Management would work with oil and gas exploration and development companies to develop mutually agreeable means to avoid or mitigate potential adverse impacts from oil and

gas activities on ferrets or their habitat. The Service is presently developing oil and gas guidelines for new leases and developments proposed in prairie dog ecosystems managed for black-footed ferret recovery, and pertinent guidelines were included in the Cooperative Management Plan (M).

9. Potential for Conflict With Grazing and Recreational Activities.

All lands in the SB/MB Management Area are included in grazing allotments. Conflicts between grazing and ferret management area not anticipated on Federal lands, as current Federal rangeland management systems favor prairie dog populations in grazed areas. Decreasing animal unit months for livestock will not benefit prairie dog

populations and will not be recommended as a tool for ferret management. No additional grazing restrictions will be placed on Federal lands with grazing allotments in the SB/MD Management Area as a result of ferret reintroduction. On Federal lands with private grazing leases, prairie dog population objectives would be cooperatively established to be consistent with ferret recovery and grazing needs.

No additional restrictions will be placed on landowners regarding prairie dog control on private and State trust lands. Under the Cooperative Management Plan (SB/MD), landowners can readily control prairie dogs in irrigated fields, wet meadows, and pastures which are economically significant to ranching and of little biological significance to ferret populations. In the unlikely event that prairie dog control proposed on private and State trust lands might eliminate or significantly diminish the prey base for established ferrets in a specific problem area, it will be the responsibility of State and Federal biologists to determine whether ferrets are likely to be negatively impacted, and if so, to provide the necessary coordination to minimize these impacts. If necessary, ferrets could be translocated from the problem area to areas of no conflict.

In the Meeteetse Management Area, equivalent cooperative grazing management measures would be implemented on Federal, private, and State trust lands if ferrets were reintroduced.

Recreational activities currently enjoyed in the SB/MB Management Area (antelope hunting, prairie dog shooting, rabbit hunting using greyhound dogs, trapping for furbearers or predators, and off-road vehicle recreation) are either unlikely to impact ferrets or would be managed to avoid or minimize negative impacts to ferrets.

Recreational activities in the Meeteetse Management Area are managed primarily by the private landowners. Based on historical use, it appears unlikely that these activities would adversely impact ferrets.

10. Protection of Ferrets

Recently released ferrets will need protection from natural sources of mortality (predators, disease, inadequate prey, etc.) and from human-caused sources of mortality. Natural mortality will be reduced through prerelease conditioning, soft release, vaccination, predator control, positive management of prairie dog populations, etc. Human-caused mortality will be minimized by placing ferrets in an area

with low human population density and relatively low development; by informing and working with landowners, Federal land managers, developers, and recreationists to develop means for conducting their existing and planned activities in a manner compatible with ferret recovery; and by conferring with developers on proposed actions and providing recommendations that will reduce any likely adverse impacts to ferrets.

A final biological opinion was prepared on this action to reintroduce ferrets into the SB/MB Management Area and concluded that this action will not jeopardize the species.

11. Public Awareness and Cooperation

An extensive sharing of information about the program and the species, via educational efforts targeted toward the public in the region and nationally, will enhance public awareness of this species and its reintroduction. The public will be encouraged to cooperate with the Service and the Department in attempts to maintain ferrets on the release site.

12. Overall

The designation of the SB/MB (or Meeteetse) population as a nonessential experimental population will encourage local cooperation as a result of the management flexibility allowed under this designation. The Service and the Department consider the nonessential experimental population designation and accompanying special rule, the Cooperative Management Plan (SB/MB) or (M), and the commitment to accommodate cooperatively planned oil, gas, and mineral exploration and development necessary to receive cooperation of affected landowners, agencies, citizens, and oil and gas, minerals, grazing, and recreational interests in the area.

13. Future Reintroductions

Since additional excess captive-reared black-footed ferrets should be available for reintroduction in 1992 or 1993, the Service plans to reintroduce black-footed ferrets into other sites within its known historical range. Like this effort, future reintroductions will be planned in partnership with affected State and Federal agencies and/or private landowners. Proposed and final rulemakings will be developed for individual populations and, possibly, several populations at a time, as appropriate. This rule may serve as a key reference document for future rulemaking documents involving reintroduced ferret populations, or even as a model for a possible programmatic

rulemaking for future reintroduction efforts.

14. Effective Date

Pursuant to 5 U.S.C. 553(d)(3), the Service finds that good cause exists to have this rule take effect upon publication. It is essential to the success of the reintroduction effort that releases commence in September of this year, when wild young ferrets would typically become independent of natal care and disperse.

Summary of Comments and Recommendations

In the May 24, 1991, proposed rule and associated notifications, all interested parties were invited to submit comments or recommendations concerning any aspect of the proposed rule that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal Agencies, business and conservation organizations, and other interested parties were contacted and requested to comment. On May 28, 1991, the Service mailed letters notifying 202 persons and organizations of the proposed rule and solicited their comments. Of these 202 persons and organizations notified, 27 were provided copies of the rule and draft environmental assessment, and 175 were provided copies of the rule and a list of nine offices where copies of the draft environmental assessment and Cooperative Management Plan (SB/MB) could be obtained. A detailed legal notice was published in: Rock Springs Daily Rocket Miner on May 24, 1991; Rawlins Daily Times on May 25, 1991; Casper Star-Tribune, Laramie Daily Boomerang, and Greybull Standard on May 26, 1991; Wyoming State Journal (Lander) on May 27, 1991; Cody Enterprise on May 29, 1991; and Wyoming Eagle-State Tribune (Cheyenne) on May 30, 1991, which invited general public comment. On May 28, 1991, a news release was mailed to 36 newspapers and 1 radio station in Wyoming. Nine government offices (eight in Wyoming, one in Colorado) were identified as distribution points where one could obtain copies of the rule and the draft environmental assessment.

The Service received letters from 25 commenters, including 3 State agencies, 5 business organizations, 6 conservation groups, and 11 individuals. Written comments received during the public comment period are covered in the following summary. Thirteen commenters supported reintroduction, completely or with reservations; five commenters opposed reintroduction;

and seven commenters were neutral. Comments of a similar nature or point are grouped into a number of general issues. These issues, and the Service's response to each, are discussed below:

Issue 1: Whether the reintroduced population should be designated as a nonessential experimental population. One commenter supported the experimental designation, six commenters supported the nonessential experimental designation, and four commenters supported a more restrictive designation based on their belief that a nonessential experimental designation was not justified and/or did not offer adequate protection to the reintroduced ferrets or ferret habitat.

Response: The Service's rationale for determining the SB/MB population to be "nonessential experimental" was explained under "Status of Reintroduced Population." Establishment of a wild population at the SB/MB Management Area is not essential to the continued existence of the species. The captive population is secure and other reintroduction sites are being identified and readied.

The designation being applied to this population meets the criterion for "nonessential" designation and complies with congressional intent, i.e., to use the experimental population designation to reduce local opposition to reintroduction of listed species and that most experimental populations would be designated nonessential.

At this time, the most valuable action that could be taken to advance ferret recovery is to use excess ferrets to test reintroduction techniques as soon as possible. The SB/MB Management Area is the best available testing and reintroduction site at this time. Pursuit of a more stringent designation at this site would be opposed by landowners and land users, and would effectively foreclose the possibility of using this site this year, and possibly in future years. Non-Federal landowners control 63 percent of the land in the SB/MB Management Area, and ferret reintroduction in this area cannot succeed without their cooperation.

Two commenters noted that if the SB/MB site is the best site for reintroduction in the nation, then why is it not "essential?" The Service's rationale for determining the SB/MB population to be nonessential experimental was explained earlier. The SB/MB site is the best available site in the nation at this time capable of supporting a self-sustaining ferret population. There appear to be better ferret habitats elsewhere, but they are not available at this time, though efforts are continuing

to determine if they can be used for ferret reintroduction.

Four commenters supported a more restrictive designation, arguing that this would provide greater protection, such as a requirement for section 7 consultation. The Service notes that section 7 consultation would apply to only 37 percent of the land in the SB/MB Management Area, and would not "make or break" the reintroduction effort as much as the degree of cooperation needed from non-Federal landowners, who control 63 percent of the land in the SB/MB Management Area. Private landowners in the area whose economic and/or recreational quality of life is linked to activities permitted on nearby Federal lands would oppose any designation requiring them to be indirectly subjected to formal section 7 consultation. The Cooperative Management Plan (SB/MB) provides a technical assistance mechanism similar to section 7 consultation whereby the Service and Department would work with parties proposing or conducting development, recreational, or prairie dog control activities in the SB/MB Management Area to provide recommendations on means to avoid, minimize, or compensate for negative impacts to ferrets or ferret habitat. This technical assistance mechanism is more palatable than formal section 7 consultation to landowners and land users.

One commenter recommended that ferrets on public lands in the SB/MB area be designated essential experimental and ferrets on private lands be designated nonessential experimental. Though his idea is intriguing, it did not appear legally possible, because it lacked justification as to why the public lands population would be essential to the continued existence of the species, while the private lands population would be nonessential. It should be noted that the nonessential experimental designation, if used throughout the SB/MB Management Area, does not preclude the use of different management strategies on Federal v. non-Federal land.

Issue 2: Whether the nonessential experimental designation and/or the Cooperative Management Plan (SB/MB) does an adequate job in protecting ferret habitat. Four commenters argued that it did not.

Response: The Service disagrees. The SB/MB Management Area covers 2,068 square miles, and the prairie dog colonies in the SB/MB Management Area were estimated to be capable of supporting 213 adult ferrets in 1990. Doing a "worst case" analysis that

assumes full development of the SB/MB Management Area without mitigation of habitat losses, then only 20.9 percent of the available ferret habitat would be affected, which would leave sufficient habitat to support 168 ferret adults. If mitigating or compensating measures were taken, as is planned for in the Cooperative Management Plan (SB/MB), much less than 20.9 percent of the ferret habitat would be altered or lost under the worst case development scenario.

One commenter urged the Service to explore other areas with more contiguous Federal land, purchase land, acquire easements, etc., in order to provide greater habitat protection. The Service is investigating potential reintroduction sites containing more contiguous Federal land, such as areas in northcentral Montana and in South Dakota. At the SB/MB Management Area, the preferred approach is to attempt voluntary cooperation to determine if mixed-ownership sites can be used for ferret recovery. Conservation easements or land acquisition will be pursued at the SB/MB site only if deemed necessary.

The Service and the Department are not trying to create an inviolable refuge for ferrets in the SB/MB Management Area; that would be impractical. Instead, we are trying to work with landowners and land users to develop a management system wherein ferrets and humans can coexist. Such a cooperative system was used at Meeteetse after the wild ferret population was found there. If mixed-ownership sites can be used successfully for reintroduction, this will increase the number of sites deemed potentially suitable for reintroduction purposes and increase the species' chances of recovery.

Issue 3: Whether there had been adequate coordination with the affected public. Six commenters questioned this.

Response: With regard to coordination with landowners in the SB/MB Management Area, in April and May 1989, a Department biologist met with several Medicine Bow landowners. In May 1989, the Department compiled a landowner list for the SB and MB areas. All landowners in these two areas whose land was to be sampled to determine prairie dog densities were contacted in person. The purpose of the contacts was to discuss: (a) The purpose of prairie dog habitat mapping conducted over the past several years, (b) the objectives for prairie dog town transecting proposed for the summer of 1989, (c) the potential of the site for black-footed ferret reintroduction, and (d) preliminary issues and concerns. All landowners in the sample areas granted

permission for prairie dog mapping and transecting of towns on their ranches, and none expressed adamant opposition to the proposal. In June 1989, aerial transects were conducted between the SB and MB areas. Landowners in this area with prairie dog colonies were contacted by Department biologists seeking permission to map prairie dog colonies. In September 1989, the Department contacted landowners in the Shirley Basin with large prairie dog towns to appraise them of the status of the ferret program.

In early January 1990, the SB/MB working group was formed and immediately met to formulate work plans. An informal open house for landowners was held in January 1990 to provide information and answer questions on the proposal to reintroduce ferrets into this area. Letters were sent to 33 ranches identified from personal contacts and permittee lists from the Bureau of Land Management. Nine landowners or ranch representatives attended the open house, and two volunteered to serve on the SB/MB working group. Three letters were received from landowners unable to attend.

The Department wrote and circulated one preliminary draft and two working drafts of the Cooperative Management Plan (SB/MB), the last of which had a distribution of over 200. The mailing list developed by the Department included most private landowners in the SB/MB Management Area with significant amounts of ferret habitat on their land, and land users that were normally contacted by the Bureau of Land Management with regard to National Environmental Policy Act documents. Each draft was revised based on comments received.

In November 1990, public meetings were held in Medicine Bow, Casper, and Laramie, Wyoming, to discuss the Cooperative Management Plan (SB/MB) and the proposed nonessential experimental population designation. These public meetings were announced on local radio stations and in all newspapers in affected counties.

A similar public coordination process was conducted for the Meeteetse Management Area, including public meetings conducted in September 1989 in Meeteetse, Cody, and Casper, Wyoming.

The primary emphasis in landowner and land user contacts was toward parties located or operating in the SB/MB Management Area. Landowners outside this area would be negligibly impacted if a ferret was found on their property and they requested that the ferret be removed.

In addition, the Department conducted further outreach through the media. Outreach efforts included ferret articles in the "Wyoming Landowner Newsletter" (Spring 1990, Summer 1990), which is mailed to every rancher in the State, and eight news releases sent out between January 1990 and April 1991. Articles on ferret reintroduction were published in Wyoming newspapers such as the Laramie Boomerang, Casper Star-Tribune, Rancher-Stockman-Oilman, Wyoming Eagle (Cheyenne), and Medicine Bow Post.

The procedures the Service used to disseminate notice and copies of the proposed rule to designate the SB/MB population as a nonessential experimental population and the accompanying draft environmental assessment were described earlier. Landowners and land users in the SB/MB Management Area will be contacted following publication of this final rule. Copies of the final rule, Cooperative Management Plan (SB/MB), and environmental assessment will be provided to those landowners and land users desiring copies.

Any landowners or land users that may have been missed during this extensive public notification process were missed unknowingly. The Department and the Service will remain available after the publication of this final rule to work out reasonable measures to accommodate landowners and land users still concerned about possible negative impacts to their operations as a result of ferret reintroduction.

Five landowners sent in comment letters indicating that they were not contacted and/or were concerned about the impacts of reintroduction on their normal operations. A Department biologist visited with them on June 25 and 28, and July 1, 1991, to explain the reintroduction program in more depth and work out solutions agreeable to both parties.

Issue 4: Whether the 30-day comment period should be extended. Three persons requested extensions to the comment period, and two persons noted that the draft environmental assessment had indicated a 60-day comment period would be granted.

Response: The Service was sympathetic to the requests for time extensions, but determined that it would not be possible to reopen the comment period for a significant time period (30 to 60 days) without jeopardizing the chances of releasing an adequate number of black-footed ferrets at the most appropriate biological time this year. Based on the limited number of excess ferrets available this year, their

birthdates, and the age (14 weeks) deemed best for release, September and October are the best release dates. The time required to publish a notice in the **Federal Register** to reopen the comment period, plus the time extension itself, would delay publication of the final rule to the point that most excess ferrets would be older than the optimal release age by the time the rule was finalized. The Service decided not to grant the time extensions because it would seriously compromise the success of the 1991 reintroduction effort.

The Service had originally planned to have a 60-day comment period for the proposed rule. However, due to circumstances beyond the Service's control, the proposed rule was published later than planned. To keep the 1991 fall release date viable, a decision was made to shorten the comment period in the proposed rule to 30 days, which is the minimum allowable for experimental population rulemakings (see 49 FR 33886). Unfortunately, a similar change should have been, but was not, made to the draft environmental assessment, which retained a reference to the originally planned 60-day comment period. The comment period for the draft environmental assessment closed on the same day as the comment period for the rule closed, i.e., June 24, 1991. The Service regrets any confusion this discrepancy may have caused.

Issue 5: Whether the 5-year evaluation referred to in § 17.84(g)(10) of the proposed rule meant that the population would be reclassified to a status other than "nonessential experimental." Two commenters requested that this point be clarified.

Response: Under the experimental population regulations (50 CFR part 17, subpart H), any rule designating an experimental population must provide "a process for periodic review and evaluation of the success or failure of the release and the effect of the release on the conservation and recovery of the species." The 5-year evaluation noted in § 17.84(g)(10) of the proposed rule was intended to be a milestone in the periodic review and evaluation process required, and will be a review of the biological success of the reintroduction effort. If determined to be less than successful, the Service and the Department will modify the reintroduction protocol and/or the strategies within the Cooperative Management Plan (SB/MB) with the involvement of affected landowners and land managers to improve ferret survival and/or recruitment. If the experiment is extremely unsuccessful, the Service and Department may consider a temporary

hold on releasing ferrets into the SB/MB Management Area until better release or management techniques are developed. The 5-year evaluation will not include an evaluation to determine whether the population should be reclassified.

Note: It is not possible to change the "nonessential experimental" designation of the SB/MB population without going through a new rulemaking process, which would include a proposed rule, a public comment period, public meetings, National Environmental Policy Act compliance documents, and other documents before a final rule to change the designation could be published.

The Service does not foresee any likely situation which would call for altering the nonessential experimental status of the population. Should any such alteration prove necessary, it is possible that it would not change ferret management on private lands. If the designation changes and if it is necessary to substantially modify ferret management on private lands, any private landowner who consented to the introduction of ferrets on his lands will be permitted to terminate his consent and the ferrets will be, at his request, relocated. This change was made to the final rule.

Issue 6: Whether the Cooperative Management Plan (SB/MB) should be referred to in the experimental population rule to establish the linkage between the rule and the Cooperative Management Plan (SB/MB). Two commenters recommended this.

Response: The Service agrees, and has changed the rule accordingly. However, because the Cooperative Management Plan (SB/MB) will be dynamic in nature (i.e., updated as necessary), the rule refers to the Cooperative Management Plan (SB/MB) in a general sense, rather than to its present version.

Issue 7: Whether the Service should develop and enter into separate agreements with each landowner who may be affected by the reintroduction of ferrets into the area. Three commenters requested that this be done.

Response: Section 17.81(d) of the experimental population regulations states: " * * * Any regulation promulgated pursuant to this section shall, to the maximum extent practicable, represent an agreement between the Fish and Wildlife Service, the affected State and Federal agencies and persons holding any interest in land which may be affected by the establishment of an experimental population." The Service believes that this final regulation (including the prefatory material) will suffice as an agreement between the Service and

affected parties, provided "grassroots" coordination continues. The Department may choose to enter into separate agreements with landowners as part of the implementation of the Cooperative Management Plan (SB/MB).

As noted under Issue 3, the Department and the Service already have gone to great lengths to scope out issues and concerns before proceeding with the Cooperative Management Plan (SB/MB) and (M) and the proposed rule. The nonessential experimental population designation and accompanying special rule provide the basic ground rules for pursuing ferret recovery amidst human uses in this experimental population area. Just as the most detailed contract cannot cover all eventualities, the agreement embodied in this experimental rule cannot address all concerns. However, the Service and the Department are ready and willing to continue to work directly with affected parties within the framework of the experimental population designation and special rule and the Cooperative Management Plan (SB/MB) to make ferret recovery compatible with landowner and land user needs.

Issue 8: Whether the Meeteetse site should be used as a backup site or designated a nonessential experimental population. One commenter noted that Meeteetse site should not be used as a backup site if it failed to meet the minimum requirements for reintroduction. Another commenter opposed designating any ferret population reintroduced at Meeteetse as nonessential experimental because it would serve as a dangerous precedent whereby the Service could bring a wild population of endangered species into captivity and then release them onto the same site at a later date under a less restrictive designation. He noted that "All of these animals (referring to ferrets from Meeteetse) would be fully protected if they were still in the wild living at Meeteetse." A fourth commenter expressed a concern similar to the third commenter's but as a concern pertaining to experimental populations, in general.

Response: With regard to the first concern, before ferrets could be released at the Meeteetse Management Area in its role as a backup reintroduction site, the site would be evaluated relative to the minimum criteria for reintroduction specified in the Cooperative Management Plan (M). With regard to the second concern, the Service would not take all members of a wild population into captivity unless it was clear that allowing them to remain in the wild would almost certainly lead to

extinction, as was the case for the ferrets at Meeteetse in 1986. The Service and the Department devoted significant resources towards maintaining the Meeteetse population in the wild, such as treating approximately 7,000 acres of prairie dog burrows to try to prevent the spread of sylvatic plague. Both the Service and the Department are convinced that the Meeteetse population would have been extirpated due to canine distemper and other stochastic events had the remaining ferrets not been rescued and placed in captivity. On a final note, it is theoretically arguable that the Service could propose to take all members of a threatened or endangered species into captivity under the pretext that it was necessary to prevent extinction in order to release them under a less restrictive designation. However, the Service finds such an idea contrary to the intent of the Act. Moreover, from a practical standpoint, such an action could not be undertaken without State consent and a State would not be likely to grant consent without strong evidence that extinction was imminent.

Issue 9: Whether the proposed action complied with the National Environmental Policy Act. One commenter challenged the adequacy of the draft environmental assessment prepared for the proposed rule and expressed her belief that the environmental assessment was prepared to justify a "done deal," while another commenter recommended that a programmatic environmental impact statement be prepared for the ferret recovery effort.

Response: The Service and the Bureau of Land Management prepared a detailed and extensively researched environmental assessment to evaluate the environmental impacts of reintroducing ferrets into the SB/MB Management Area. A supplemental draft environmental assessment was prepared to evaluate the impacts of using the Meeteetse Management Area as a backup site. It was deemed appropriate to prepare a draft environmental assessment on the proposed rule, receive public comments and revise the rule, then prepare a final environmental assessment on the final rule. Both bureaus found National Environmental Policy Act compliance to be adequate for this action. The proposed action is not a "done deal," as there are five explicit conditions specified in the Cooperative Management Plan (SB/MB) that could cause the Service and Department to reevaluate reintroduction into the SB/MB Management Area. In fact, the

Service and the Department originally had planned to reintroduce ferrets to the Meeteetse Management Area, until it met one of its five conditions for not using the site, i.e., a ferret habitat rating index that was 50 percent or less than the 1988 ferret habitat rating index.

The Service cannot prepare a programmatic Environmental Impact Statement on the ferret recovery program at this time because it does not have a "proposal" for ferret recovery, as defined in 50 CFR 1508.23. Most potential reintroduction sites are still being evaluated, and only two cooperative management plans have been developed. We do not even know if it is possible to successfully reintroduce captive-raised ferrets back into the wild. Until the ferret recovery program is more fully developed and more information is developed from actual reintroduction attempts, it is premature to consider preparing a programmatic Environmental Impact Statement.

Issue 10: Whether different experimental treatments (changes in the experimental design) would be attempted in the reintroduction protocol. Two commenters urged testing alternative treatments to find the "best" release strategy.

Response: Two experimental treatments are proposed for the SB/MB reintroduction effort. Their implementation will be determined by the number of excess ferrets available for reintroduction. If 50 or fewer animals are available in the first year, only one treatment will be used. A second treatment will be used if there are animals in excess of 50 during the first year. If only one treatment is used during the first year, then at least two treatments will be tested in the second year.

Issue 11: Whether the predator control efforts specified in the rule and associated documents are acceptable. One commenter urged predator removal by nonlethal methods. Another commenter appeared to encourage complete removal of predators. A third commenter was willing to accept temporary, but not long term, predator control.

Response: Live-trapping will be the first predator control option considered. However, lethal methods may be used if nonlethal methods are not expedient or effective enough to protect ferrets. All control methods used will comply with Federal and State law. Predator control will be selective, site-specific, and short-term to provide captive-raised ferrets better survival odds during the first few weeks of releases. Because the ultimate goal is to produce a self-sustaining wild

population of ferrets, eventually the ferrets must learn to survive under normal predator pressures.

Issue 12: Whether the reintroduction protocol provides a sufficient degree of protection to the released ferrets. One commenter was concerned about the high level of mortality expected for released animals and questioned the degree of protection offered under the Cooperative Management Plan (SB/MB).

Response: Ferrets raised in captivity are rarely, if ever, exposed to predators, disease, parasites, fluctuating food supplies, inclement weather, and other mortality factors. When released into the wild, it is inevitable that many of these sheltered animals will succumb to the normal rigors and dangers of their natural environment. In the first year, prerelease conditioning, soft release, supplemental feeding, predator control, release into healthy prairie dog colonies, and positive management of human activities to avoid adverse impacts to ferrets should reduce mortality. Causes of injury and mortality in the first year will be examined and used to refine the reintroduction protocol and Cooperative Management Plan (SB/MB) to reduce losses the following year. As long as there is reasonable hope that ferrets can survive at the site, there will be a continual process of experimenting and learning how to improve ferret survival.

Issue 13: Whether canine distemper will be sampled and managed by appropriate methods. One commenter asked whether sampling for canine distemper will be done through nonlethal blood sampling or lethal methods. Another commenter asked about restrictions on dogs in the SB/MB Management Area. A third commenter believed that it would be too restrictive to decide to not use the SB/MB Management Area if an active case of canine distemper was discovered in the SB/MB Management Area.

Response: Blood sampling can only diagnose whether an individual predator was ever exposed to distemper; it cannot be used to detect active distemper. Because active canine distemper can be diagnosed only through histopathology, virus isolation, and electron microscopy, a sample of wild predatory mammals in the area must be killed and necropsied. Not only will these techniques determine whether canine distemper was active in a sampled animal, but they also will discover whether the animal was shedding the virus (Dr. Elizabeth Williams, veterinary pathologist, Department of Veterinary Science, University of Wyoming, pers. comm., 1991).

The Department and the Service will conduct public information efforts to actively inform local residents and visitors of the potential disease threat posed by dogs, and request that dogs either not be allowed to enter the reintroduction site or be vaccinated prior to entry. Efforts are continuing to develop an effective canine distemper vaccine for ferrets.

The SB/MB Management Area is so large (over 2,000 square miles) that the discovery of a single case of active canine distemper may not necessarily be sufficient cause to withdraw the entire site from consideration for reintroduction. The Department and the Service will reevaluate and not necessarily forgo reintroduction if an active case of canine distemper is found in the SB/MP Management Area.

Issue 14: Whether sufficient flexibility will be given to "on the spot" managers to deal with the natural, dynamic shifts in prairie dog numbers and locations.

Response: The Service agrees that prairie dogs constitute a dynamic resource. Provision will be made for "on the spot" and other managers to have appropriate authority to deal with changes in prairie dog numbers and locations such that sufficient ferret habitat is maintained.

Issue 15: Whether the oil and gas guidelines and block clearance guidelines need to be finalized before the SB/MB nonessential experimental population is designated. Two commenters urged that this be done. Another commenter was concerned that block clearance would render some lands permanently unavailable for reintroduction.

Note: "Oil and gas guidelines" refers to general guidelines for making oil and gas development compatible with ferret reintroduction in an area; "block clearance guidelines" refers to general criteria that should be met in order for the Service to declare a specific area containing prairie dogs: (a) To have a high probability of being free of ferrets, and (b) not suitable for ferret recovery, so that ferret surveys will no longer be required for prairie dog control efforts in that area.

Response: Both sets of general guidelines do not need to be finalized before this initial reintroduction attempt is made. Because ferret reintroduction is in its infancy, oil and gas guidelines need to be tested, just as ferret reintroduction itself is being tested to see if it will work. Based on the projected oil and gas development potential in the SB/MB Management Area and the siting of the primary ferret release areas, the Service believes that there will not be significant conflicts

between ferret recovery and existing and likely oil and gas development (see "Potential for conflict with oil and gas and mineral development activities" and final environmental assessment). In the SB/MB Management Area, oil and gas restrictions are not deemed necessary. A general process for dealing with oil and gas development is outlined in the Cooperative Management Plan (SB/MB), and mitigative measures will be negotiated on a case-by-case basis if a proposed project appears to have the potential to adversely impact ferrets or ferret habitat. In the future, when the oil and gas guidelines are completed, appropriate techniques can be incorporated into the Cooperative Management Plan (SB/MB). In addition, as more is learned about reconciling ferret reintroduction with oil and gas activities, these techniques will be refined.

As presently envisioned, the oil and gas guidelines will be a "toolbox" of techniques from which the most appropriate techniques will be selected to use at each reintroduction site. The cooperative management plan developed for each site will develop a site-specific oil and gas management strategy using all or some of the techniques in the oil and gas guidelines.

The SB/MB experimental population area is administratively declared "ferret free" at the moment this rule is final. This is not the same as "block clearing," which entails a determination of an area being "ferret free" and "not suitable for ferret recovery." "Ferret free" determinations are made for potential experimental population reintroduction sites, while "block clearing" will be done only on sites unsuitable for ferret recovery, e.g., areas with high levels of human use. Therefore, it is not necessary to finalize the block clearing guidelines before proceeding with the SB/MB reintroduction. However, the Service does agree to continue progress on block clearance guidelines which will be used in areas determined to be unsuitable for ferret recovery.

Issue 16: Whether innocent landowners and land users will be exposed to prosecution if they accidentally harm a ferret during the course of their normal lawful activities. Two commenters were concerned about this.

Response: The Service agrees this is a legitimate concern and has added a provision to the special rule to allow incidental take of ferrets (i.e., takings that result from, but are not the purpose of, the carrying out of an otherwise lawful activity). Further discussion regarding incidental take was added to "5. Mortality."

Issue 17: Whether reintroduction of ferrets will result in a take of private property rights. One commenter was concerned about this.

Response: The designation of the reintroduced population as "nonessential experimental," the accompanying special rule, and the Cooperative Management Plan (SB/MB) provide a means and a system to reintroduce ferrets without harming or taking individual property rights. The Service and the Department need voluntary cooperation from private landowners for successful reintroduction, and any aspect of the reintroduction program that might result in a take of private property rights would be modified to maintain landowner cooperation.

Issue 18: Whether the ferret reintroduction effort was likely to adversely affect landowners' ability to control prairie dogs. One commenter (a landowner) believed current land management practices for livestock production were fully compatible with ferret reintroduction and that active control of prairie dogs was not economically justified under current conditions. Another commenter (a scientist) noted that a strong case can be made using recent data from the Shirley Basin that the burrowing activities of prairie dogs actually benefit livestock in areas with clayey subsoils or that are sodium affected (which are common in the Shirley Basin area) due to enhanced production of sagebrush and grass. A third and fourth commenter asked about how rodenticides would be used in the SB/MB area. A fifth commenter wanted clarification on what the term "control techniques compatible with ferret recovery objectives" meant and whether the cooperative agreements with landowners concerning prairie dog numbers meant the landowners were obligated to produce a fixed number of prairie dogs on their land.

Response: As noted in the Cooperative Management Plan (SB/MB), the private landowners in the SB/MB Management Area rarely use rodenticides. Zinc phosphide is the only approved rodenticide, and the Service must be contacted before its use. Once contacted, the Service and the Department will assess the situation and determine whether the application would negatively affect ferrets. If there will be an impact of concern, then the Department and Service will recommend means to avoid or minimize those impacts, including moving ferrets to other areas, if necessary. If ferrets were allowed to remain in the treatment area, the best scientific data available suggest that there will be no danger of

secondary poisoning from zinc phosphide, used in accordance with label instructions. The greater concern from use of rodenticides would be loss of the prey base.

Note: If a landowner contacted the service, was cleared to use a specific rodenticide in accordance with label instructions and Service and Department recommendations, and a ferret was found dead, presumably from secondary poisoning, in the area cleared for rodenticide use, this would be considered incidental take if the landowner applied the rodenticide in accordance with the guidance provided, and, therefore, not subject to prosecution.

Examples of control techniques compatible with ferret recovery objectives are provided in Strategy f under Problem 3 in the Cooperative Management Plan (SB/MB).

Prairie dog acreages will be established for each ranch in the SB/MB Management Area, set entirely at the prerogative of the landowner. These are not considered contracts requiring production of a specified acreage of prairie dogs.

Issue 19: Whether ferret reintroduction would adversely impact shooting, trapping, or hunting activities in the SB/MB Management Area area, or conversely, whether these activities would adversely impact ferrets. One person was concerned about the possible negative consequences to ferrets of continuing such activities in the area and recommended developing a set of criteria for closures. Another person recommended a ban on prairie dog shooting/trapping in the area. A third and fourth persons asked if there would be restrictions on prairie dog shooting on their land or in the PMZ.

Response: Prairie dog shooting will continue in the SB/MB Management Area, but measures will be taken to avoid or minimize incidental take of ferrets and loss of ferret habitat (Refer to strategies under Problem 8 in the Cooperative Management Plan (SB/MB)). Furbearer trapping will continue, but with modifications to avoid incidental take of ferrets (Refer to strategies under Problem 7 in the Cooperative Management Plan (SB/MB)). Hunting will continue, but with adjustments to avoid conflict with ferret reintroduction (Refer to Problems 9 and 10 in the Cooperative Management Plan (SB/MB)). Careful timing of ferret releases can avoid much of the potential for conflict with hunters. For example, the Department estimates that 80 percent of the sage grouse hunters and up to 75 percent of the antelope hunters

will hunt on opening weekend. A small percentage of these hunters will return later in the season. These hunters, and those who did not hunt on opening weekend, tend to be more widely dispersed throughout the remainder of the hunting seasons, creating less potential conflict with ferret release activities.

Issue 20: Whether there will be unreasonable restrictions on landowners or land users. Two commenters were concerned about this.

Response: No. It is the intent of the Service and the Department to work out reasonable, cooperative solutions to all situations where there is a conflict between human uses of and ferret recovery in the SB/MB Management Area. Refer to Issue 1 concerning the nonessential experimental population designation, the Cooperative Management Plan (SB/MB), and the final environmental assessment for further discussion on this issue.

Issue 21: Whether a formal mechanism has been or will be developed for allowing the public to be informed of or participate in ferret recovery. One commenter was concerned about this.

Response: Persons interested in staying abreast of the ferret recovery effort may: (1) Attend the meetings of the SB/MB Working Group or the Black-footed Ferret Advisory Team, which are open to the public, (2) contact the Department and ask to be placed on their general SB/MB or Meeteetse mailing lists, (3) subscribe to "The Drumming Post," a periodic newsletter put out by the Department, or (4) request a copy of the annual report that will be prepared on the ferret reintroduction effort by the Department.

Issue 22: Whether the Service or the Department would compensate the Wyoming State Land Trust for any income lost from restrictions required on State trust lands. One commenter advocated such compensation.

Response: The Service and the Department cannot require the Wyoming Board of Land Commissioners to impose any restrictions on State trust lands. The only restrictions on State trust lands that would be imposed would be those that the Wyoming Board of Land Commissioners would impose voluntarily. The Service would not compensate the Wyoming Board of Land Commissioners for income lost from voluntary restrictions.

Issue 23: In 50 CFR 17.84(g)(4) in the proposed rule, whether the terms "agent," "necessary," and "conflict" require clarification. One commenter recommended that these terms be clarified.

Response: The term "agent" refers to any person who is not an actual employee of the Service or the Department, but who is authorized by the Service or Department to handle ferrets. The term "necessary" will not be defined, and will be left to the discretion of the Service and the Department. The term "conflict" refers to situations involving lawful activities proposed for or normally conducted within the experimental population area that are likely to result in adverse impacts of concerns to ferrets and for which reasonable alternative courses of action that would result in no or less harm to ferrets were not agreed to or capable of being implemented.

Issue 24: One commenter requested information on the land ownership patterns in PMZ1 and PMZ2.

Response: PMZ1 is 47 percent Federal land, 43 percent private land, and 10 percent State trust land. PMZ2 is 70 percent private land, 22 percent Federal land, and 8 percent State trust lands.

Issue 25: Whether the rule should allow for taking of ferrets that wander outside the experimental population area. One commenter recommended this.

Response: It is highly unlikely that ferrets would expand beyond the boundaries of the experimental population area for the reasons noted in "Location of Reintroduced Population." The SB/MB Management Area and the experimental population area are disproportionately huge compared to the most optimistic reasonable projection of ferret survival and recruitment. Ferrets approaching the boundaries of the experimental population area could be translocated to other reintroduction sites.

If ferrets were able to survive and reproduce beyond projections, any ferret found outside the experimental population area boundary would receive the full protection of the Act. It would be possible to expand the boundaries of the experimental population area through a rulemaking, provided such expansion was into areas determined to be ferret-free.

Issue 26: Whether reintroduced populations should be separated geographically. One commenter opposed this.

Response: There are no longer vast, continuous prairie dog complexes in the western United States. Reintroduced ferret populations must be geographically isolated because the remaining ferret habitat is fragmented.

Issue 27: One commenter disagreed with one statement in the Black-Footed Ferret Recovery Plan and desired that specific tasks (#2435, 2442, 2443) in the

recovery plan be clarified and/or addressed in the environmental assessment for this rule.

Response: This rulemaking does not open up the Black-Footed Ferret Recovery Plan for comment. Tasks 2435, 2442, 2443 are either not at issue in this rule or premature to surface.

Issue 28: Whether the ferret reintroduction effort conforms to the Great Divide and Platte River Resource Management Plans. One commenter questioned this in great detail.

Response: At the time the January 1991 draft of the Cooperative Management Plan (SB/MB) was being written (October 1990), the Great Divide Resource Management Plan had not been finalized. The Platte River Resource Management Plan was final at the time the January 1991 draft Cooperative Management Plan (SB/MB) was written, but discussions with the Casper District of the Bureau of Land Management did not result in a definitive answer as to whether the Cooperative Management Plan (SB/MB) was in compliance with the Platte River Resource Management Plan. Subsequent finalization of the Great Divide Resource Management Plan and further discussions with the Casper District has resulted in the conclusion that this action conforms with these Resource Management Plans. If it was discovered that there was a discrepancy between these Resource Management Plans and this final rule, the Resource Management Plans would be updated to conform with this rule.

National Environmental Policy Act

A final environmental assessment as defined under the authority of the National Environmental Policy Act of 1969 has been prepared and is available to the public at the Service Offices identified in the "Addresses" section. The assessment formed the basis for the decision that this is not a major Federal action which would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969.

Executive Order 12291, Paperwork Reduction Act, and Regulatory Flexibility Act

The Service has determined that this is not a major rule as determined by Executive Order 12291 and that it would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96-354). The rule does not contain any information collection or recordkeeping

requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96-511).

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Authors

The principal authors of this rule are Ron Crete, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Montana Office, Helena, Montana (Telephone: 406/449-5225 or FTS 585-5225) and Nancy Chu, Fish and Wildlife Enhancement, U.S. Fish and Wildlife Service, Regional Office, Denver, Colorado (Telephone: 303/236-7398 or FTS 776-7398).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulations Promulgation

PART 17—[AMENDED]

Amend part 17, subchapter B of chapter I, title 50 of the U.S. Code of Federal Regulations, as set forth below:

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361-1407; 16 U.S.C. 1531-1544; 16 U.S.C. 4201-4245; Pub. L. 99-625, 100 Stat. 3500, unless otherwise noted.

2. Amend § 17.11(h) by revising the existing entry for the black-footed ferret under "Mammals" to read as shown below:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
Mammals:	.	.	.	.	.	.	.
Ferret, black-footed.	<i>Mustela nigripes</i>	Western U.S.A., Western Canada.	Entire, except where listed as an experimental population below.	E	1,3,433	NA	NA
Do.....	.....do.....	.....do.....	WY: in the wild, south and east of the N. Platte River within Natrona, Carbon, and Albany Counties.	XN	433	NA	17.84(g).
.

3. Amend 50 CFR 17.84 by adding new paragraph (g) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(g) Black-footed ferret (*Mustela nigripes*).

(1) The black-footed ferret population identified in paragraph (g)(9) of this section is a nonessential experimental population. This population will be managed in accordance with a Cooperative Management Plan developed by the Shirley Basin/Medicine Bow Working Group.

(2) No person may take this species in the wild in the experimental population area, except as provided in paragraphs (g)(3), (4), (5) and (10) of this section.

(3) Any person with a valid permit issued by the U.S. Fish and Wildlife Service (Service) under § 17.32 may take black-footed ferrets in the wild in the experimental population area for educational purposes, scientific purposes the enhancement of

propagation or survival of the species, zoological exhibition, and other conservation purposes consistent with the Endangered Species Act and in accordance with applicable State fish and wildlife conservation laws and regulations.

(4) Any employee or agent of the Service or the Wyoming Game and Fish Department (Department) who is designated for such purposes, when acting in the course of official duties, may take a black-footed ferret in the wild in the experimental population area if such action is necessary:

- (i) For scientific purposes;
- (ii) To relocate a ferret to avoid conflict with human activities;
- (iii) To relocate a ferret that has moved outside the Shirley Basin/Medicine Bow Management Area when removal is necessary or requested or whose removal is requested pursuant to paragraph (12) of this rule;

(iv) To relocate ferrets within the experimental population area to improve ferret survival and recovery prospects;

(v) To relocate ferrets from the experimental population area into future reintroduction sites or captivity;

(vi) To aid a sick, injured, or orphaned specimen; or

(vii) To salvage a dead specimen which may be useful for scientific study.

(5) A person may take a ferret in the wild within the experimental population area, provided such take is incidental to, and not the purpose of, the carrying out of an otherwise lawful activity. Knowing or willful take will be prosecuted.

(6) Any taking pursuant to paragraphs (g)(3), (4)(vi) and (vii), and (5) must be reported immediately to the State Supervisor, Fish and Wildlife Enhancement, Fish and Wildlife Service, Cheyenne, Wyoming (Telephone: (307) 772-2374), who will determine the

disposition of any live or dead specimens.

(7) No person shall possess, sell, deliver, carry, transport, ship, import, or export by any means whatsoever, any ferret or part thereof from the experimental population taken in violation of these regulations or in violation of applicable State fish and wildlife laws or regulations or the Endangered Species Act.

(8) It is unlawful for any person to attempt to commit, solicit another to commit, or cause to be committed, any offense defined in paragraphs (g)(2) and (7) of this section.

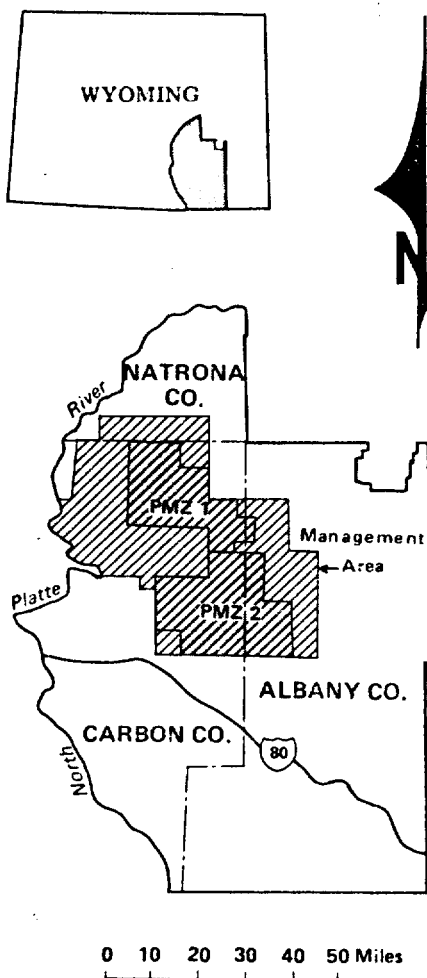
(9) The site for reintroduction of black-footed ferrets is within the historical range of the species. The reintroduction area, Shirley Basin/Medicine Bow Management Area, is shown on the attached map and will be considered the core recovery area for this species in southeastern Wyoming. The boundaries of the nonessential experimental population will be that part of Wyoming south and east of the North Platte River within Natrona, Carbon, and Albany Counties (see map). All marked ferrets found in the wild within these boundaries prior to the first breeding season following the first year of releases will constitute the nonessential experimental population during this period. All ferrets found in the wild within these boundaries during and after the first breeding season following the first year of releases will comprise the nonessential experimental population, thereafter.

(10) The reintroduced population will be continually monitored during the life of the project, including the use of radio telemetry and other remote sensing devices as appropriate. All released animals will be vaccinated against diseases prevalent in mustelids, as appropriate, prior to release. Any animal which is sick, injured, or otherwise in need of special care may be captured by authorized personnel of the Service or the Department or their agents and given appropriate care. Such an animal may be released back to the wild in the Shirley Basin/Medicine Bow Management Area or another authorized site as soon as possible, unless physical or behavioral problems make it necessary to return the animal to captivity.

(11) The status of the experimental population will be reevaluated within the first 5 years after the first year of releases of black-footed ferrets to determine future management needs. This review will take into account the reproductive success and movement patterns of the individuals released on the area, as well as the overall health of

the experimental population and the prairie dog ecosystem in the above described area. Once recovery goals are met for delisting the species, a conservation plan(s) will be proposed to address delisting.

(12) This 5-year evaluation will not include a reevaluation of the "nonessential experimental" designation for this population. The Service does not foresee any likely situation which would call for altering the nonessential experimental status of the population. Should any such alteration prove necessary and it results in a substantial modification to black-footed ferret management on private lands, any private landowner who consented to the introduction of black-footed ferrets on his lands will be permitted to terminate his consent and the ferrets will be, at his request, relocated pursuant to paragraph (g)(4)(iii) of this section.



Dated: August 9, 1991.

Bruce Blanchard,
Acting Director, Fish and Wildlife Service.
[FR Doc. 91-19969 Filed 8-20-91; 8:45 am]
BILLING CODE 4310-55-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 253

[Docket Number 910767-1167]

Interjurisdictional Fisheries

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to implement the Fishery Conservation Amendments of 1990, which amend the Interjurisdictional Fisheriesunding to states with agreements for the protection of fishery resources that are managed under an interstate fishery management plan, and (2) by limiting the Federal funding for disaster assistance under the Act to 75 percent.

EFFECTIVE DATE: August 21, 1991.

FOR FURTHER INFORMATION CONTACT: Richard H. Schaefer, Director, Office of Fisheries Conservation and Management, or Austin R. Magill, 1335 East-West Highway, Silver Spring, MD 20910, phone (301) 427-2347.

SUPPLEMENTARY INFORMATION: Public Law 99-659 was enacted on November 14, 1986, and became effective October 1, 1987. The purpose of title III of the Act was to promote and encourage state activities in support of the management of interjurisdictional fishery resources throughout their range. Regulations implementing the Act were promulgated on June 3, 1988.

The regulations, at 50 CFR 253.3(b), provide that a state whose apportionment formula pursuant to 50 CFR 253.3(a) is less than one-third of 1 percent may receive funding if the state has entered into an enforcement agreement with the Secretary of Commerce and/or the Secretary of the Interior. On November 28, 1990, Public Law 101-627, the Fishery Conservation Amendments of 1990, became effective. Section 501 amended section 304(c)(3)(B) of the Act so that a state enforcement agreement must pertain to the protection of fishery resources that are managed under an interstate fishery management plan for the state to be eligible for funding under section 304(c)(3). This effectively prohibits a state that is not a